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**Resistflame Acquisition Company, Inc. f/k/a Resistflame Kiesling & Hess Finishing Company and Unite Here!, Philadelphia Joint Board, AFL-CIO, CLC. Case 4-CA-36334**

September 17, 2010

**SUPPLEMENTAL DECISION AND ORDER**

BY MEMBERS BECKER, PEARCE, AND HAYES

The Acting General Counsel seeks default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On March 6, 2009, the Board issued a Decision and Order<sup>1</sup> that, among other things, ordered the Respondent to make whole the Welfare and Security Fund and the Union for any losses suffered as a result of the Respondent's unfair labor practices in violation of Section 8(a)(5) and (1) of the Act. On January 22, 2010, the United States Court of Appeals for the Third Circuit entered its Judgment<sup>2</sup> enforcing in full the provisions of the Board's Order.<sup>3</sup>

A controversy having arisen over the amount of contributions due the Welfare and Security Fund and withheld dues due the Union, on June 25, 2010, the Regional Director issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter and email notification dated July 16, 2010, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by July 23, 2010, default judgment would be sought. The Respondent filed no answer.

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<sup>1</sup> 353 NLRB No. 107.

<sup>2</sup> No. 09-2819.

<sup>3</sup> Although this case was decided by only two Board Members, the court's order and mandate upholding that decision became final prior to the Supreme Court's decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635 (2010), holding that a two-member group may not exercise delegated authority when the membership of the group falls below three. In these circumstances, we regard the matters finally resolved by the court of appeals as res judicata in this proceeding. See *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371, 374-378 (1940); *Nemaizer v. Baker*, 793 F.2d 58, 65 (2d Cir. 1986) (cited with approval in *United Student Aid Funds, Inc. v. Espinosa*, 130 S.Ct. 1367, 1377 (2010)).

On July 27, 2010, the Acting General Counsel filed with the Board a motion for default judgment, with exhibits attached. On July 29, 2010, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.56 (a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the Acting General Counsel's Motion for Default Judgment. Accordingly, we conclude that the net contributions due the Welfare and Security Fund and the net withheld dues owing the Union are as stated in the compliance specification and we will order the Respondent to pay those amounts to the Fund and the Union, plus interest accrued to the date of payment<sup>4</sup>

**ORDER**

The National Labor Relations Board orders that the Respondent, Resistflame Acquisition Company, Inc. f/k/a Resistflame Kiesling & Hess Finishing Company, Cincinnati, Ohio and Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall make

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<sup>4</sup> The compliance specification alleges that the Respondent made Welfare and Security Fund contributions on the 10th of each month following the month in which any bargaining unit employee worked. The Respondent ceased operations at the facility involved in June 2009. Exh. A of the compliance specification shows the amounts of contributions owed based on work performed as late as June 2009. With respect to dues payments, as reflected in Exh. B of the compliance specification, the Respondent's obligation to remit dues to the Union ended in November 2008, when the Respondent ceased deducting any dues from the pay of bargaining unit employees.

whole the Welfare and Security Fund and the Union, by paying the Welfare and Security Fund the total amounts of contributions, liquidated damages and interest as set forth below and by paying the Union the total amount of withheld dues as set forth below, plus interest in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), accruing to the date of payment.

|                                      |             |
|--------------------------------------|-------------|
| Total due Welfare and Security Fund: | \$45,345.38 |
| Total due Union:                     | 2,494.00    |
| COMBINED TOTAL DUE:                  | \$47,839.38 |

Dated, Washington, D.C. September 17, 2010

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| Craig Becker, | Member |
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| Mark Gaston Pearce, | Member |
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| Brian E. Hayes, | Member |
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